Toffoloni v. LFP Publishing Group, LLC

Doc. 31 Att.

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrator and Personal Representative of the ESTATE OF NANCY E. BENOIT, Plaintiff, v. LFP PUBLISHING GROUP, LLC., d/b/a Hustler Magazine, MARK SAMANSKY, an individual, and other distributors and sellers of Hustler Magazine, as Defendants X, Y, and Z, Defendants	)))))))))))))))))	Case No. 1:08-CV-00421-TWT

AFFIDAVIT OF RICHARD P. DECKER

STATE OF GEORGIA

COUNTY OF FULTON

Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, RICHARD P. DECKER, who, after being duly sworn, deposes and states as follows:

(1)

My name is Richard P. Decker. I am over 21 years of age and am under no legal disabilities. This affidavit is given upon personal knowledge in support of Plaintiff's motion for an award of attorney fees, which were incurred by Plaintiff responding to the Defendants' frivolous motion to stay on September 17, 2009.

(2)

I am a member in good standing of the State Bar of Georgia and the United States District Court for the Northern District of Georgia. I was admitted to the State Bar of Georgia on November 2, 1972, and to the Bar of the United States District Court for the Northern District of Georgia on December 3, 1973. I am admitted to many other state and federal courts across the United States, including the Courts of Appeal for the 1st, 3rd, 4th, 5th and 11th Circuits, and the Supreme Court of the United States. I have been engaged in the practice of civil litigation in the State and Federal courts of Georgia, and other states and federal judicial circuits for more than 37 years.

(3)

Based upon my knowledge and familiarity with the rates charged by lawyers, with experience comparable to mine, for civil litigation work in the area covered by the United States District Court for the Northern District of Georgia, I state under oath that the rate of $350.00 per hour charged by me for my work in this case on behalf of the Plaintiff, Maureen Toffoloni, is reasonable.

(4)

Also, based upon my knowledge and familiarity with the work of lawyers in this area, I state under oath that the time spent by me responding to the Defendant's motion to stay these proceedings, including my appearance in court on October 2, 2009, for a total of 17 hours, is reasonable and necessary.

(5)

I also state under oath that, in my opinion, the Defendant's motion to stay these proceedings is substantially frivolous. Federal case law does not support Defendant's legal position that this matter should be stayed pending Defendant's alleged petition for the grant of a writ of certiorari to the United States Supreme Court. In fact, the weight of the case law with which I am familiar is strongly against Defendant's legal position. Prior to the filing by Defendant of the motion to stay, I advised counsel for Hustler magazine that any such motion was not authorized by case law, that any such motion would be frivolous, and that I would seek attorney fees for having to respond to any such motion. The motion to stay was filed despite my admonition.

(6)

I therefore request, on behalf of Plaintiff, that the court make an award of $5950.00 in attorney fees to compensate Plaintiff for having had to respond to Defendant Hustler's motion to stay.

AFFIANT FURTHER SAYETH NOT.

This 21st day of September, 2009.

RICHARD P. DECKER

Sworn to and subscribed before me
this 21st day of September, 2009.

Notary Public

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